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MICHAEL RODAK, JR., C

In the

Supreme Court of The United States

OCTOBER TERM, 1972

No. 72-887

AMERICAN PARTY OF TEXAS, et al,

Appellants,

v.

BOB BULLOCK, Secretary of State of Texas,

Appellee.

No. 72-942

ROBERT HAINSWORTH,

Appellant,

v.

BOB BULLOCK, Secretary of State of Texas,

Appellee,

*Appeal from the United States District Court for
the Western District of Texas*

**SUPPLEMENTAL APPENDIX
TO BRIEF FOR APPELLANTS
AMERICAN PARTY OF TEXAS**

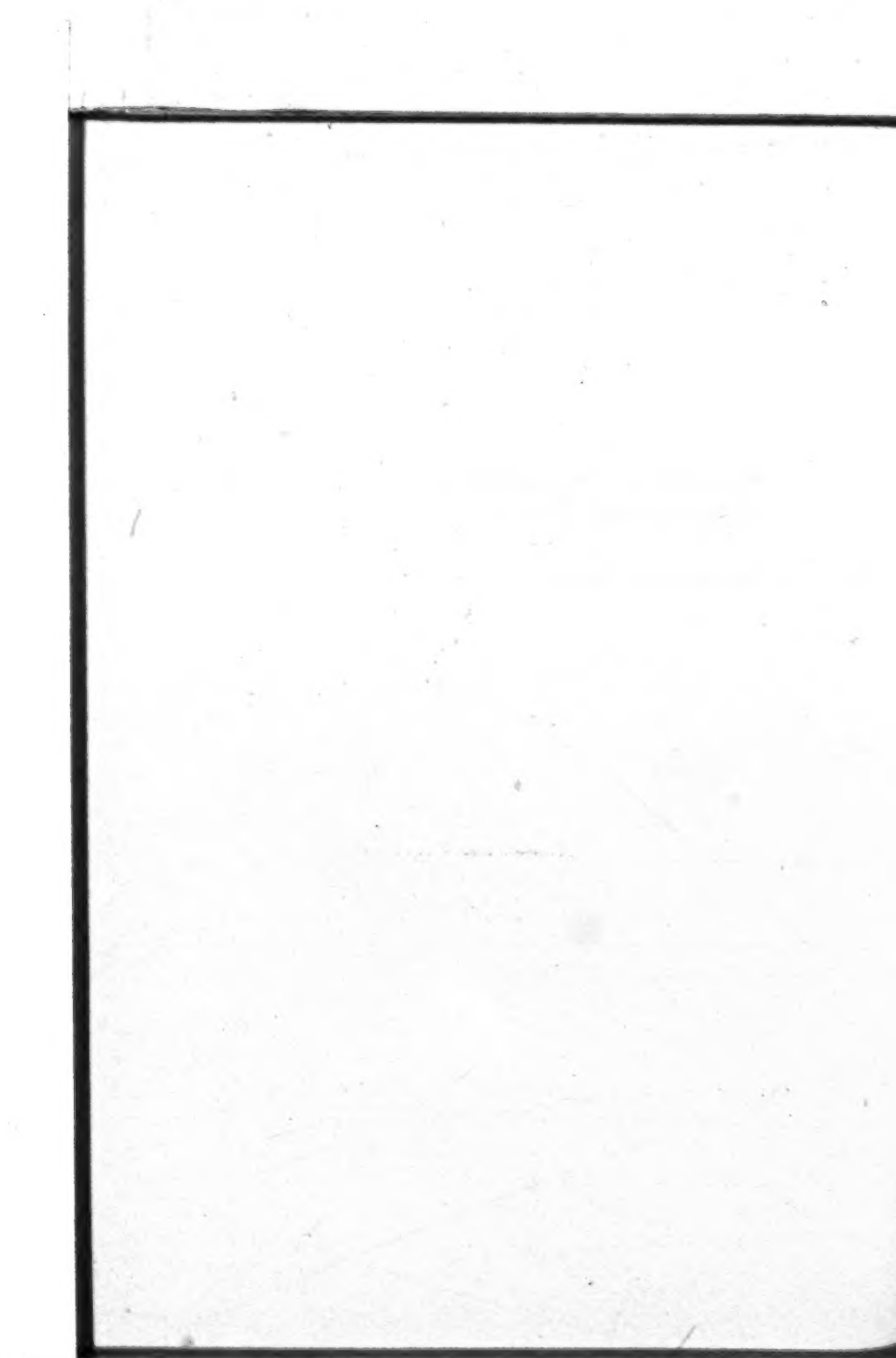
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of Texas.*

June, 1973

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TO SAID HONORABLE COURT:

Pursuant to Rule 41 (5), Appellants, the American Party of Texas, respectfully file this Supplemental Appendix to the Brief for Appellant, American Party of Texas, of newly enacted Legislation of controlling character signed by the Governor of Texas on June 15, 1973, and filed in the Office of the Secretary of Texas, on June 16, 1973, at 4:30 P. M.

AN ACT

enacting temporary provisions relating to the conduct and financing of primary elections held in 1974; also enacting permanent provisions relating to the minimum and maximum number of registered voters in a voting precinct, the standards for determining whether a party makes its nominations by primary elections or by conventions, the filing procedure for primary election candidates, and the number of ballots furnished for each voting precinct in primary elections; amending the following sections of the Texas Election Code, as amended: Paragraph (b), Section 12 (Article 2.04, Vernon's Texas Election Code); Section 180 (Article 13.02); Subsection (c), Section 187 (Article 13.09); Paragraph 2, Section 190 (Article 13.12); and Subdivision 1, Section 222 (Article 13.45); and declaring an emergency_____

BE IT ENACTED BY THE LEGISLATURE OF THESTATE OF TEXAS:Section 1. CONDUCT OF THE PRIMARY ELECTIONS

(a) Nominations for the general election to be held on November 5, 1974, shall be made in the manner provided in the Texas Election Code, as amended. The primary elections held by a political party pursuant to Sections 180 and 181, Texas Election Code (Articles 13.02 and 13.03, Vernon's Texas Election Code), shall be conducted through the party's

state executive committee and county executive committees in accordance with the procedures detailed in the Texas Election Code, as amended, with the following modifications and clarifications:

(b) In order for a candidate to have his name placed on the ballot for the general primary election, he must have either paid a filing fee or filed a nominating petition in compliance with Section 1(c) of this Act.

(c) Payment of filing fee:

Every candidate for public office shall accompany his application for a place on the general primary ballot with a filing fee in the amount prescribed in this section, unless he uses a nominating petition prescribed by this section. The schedule of fees is as follows:

1. All statewide offices \$1000
2. United States representative 500
3. State senator 400
4. State representative 200
5. Member, State Board of Education 50
6. Chief Justice or Associate
Justice, Court of Civil Appeals 400
7. District judge or judge of any other
court having status of district office
as classified in Section 61c,
Texas Election Code 400
8. District attorney or criminal

	district attorney	400
9.	All county offices, as classified in Section 61c, Texas Election Code, except county surveyor or inspector of hides and animals	150
10.	County surveyor or inspector of hides and animals	50
11.	County commissioner	100
12.	Justice of the peace or constable, for counties above 200,000 population	100
	for counties under 200,000 population	50
13.	Public weigher	50

In lieu of payment of a filing fee, a candidate may file a nominating petition which must be signed by the qualified voters eligible to vote for the office for which the candidate is running as follows:

For statewide offices, 5,000 signatures.

For district, county, precinct, or other political subdivisions, equal in number to at least two percent of the entire vote cast for that party's candidate for governor in the last preceding general election in the territory. In no event shall the number of signatures required be less than 25 nor more than 500.

No person shall sign more than one nominating petition for the same office. Signing two petitions makes both signatures void.

The nominating petitions must be submitted to the appropriate official with the candidate's application for a place on the general primary ballot.

(d) The fees paid to the county chairman pursuant to Section 1 (c) of this Act and any contributions made to the county chairman or the county executive committee for the specific purpose of helping defray the costs of the primary elections shall be deposited to the credit of the primary fund referred to in Section 196 of the Texas Election Code, as amended (Article 13.18, Vernon's Texas Election Code), and shall be applied to payment of the costs of the primary elections. The county chairman and the committee may also use any other available funds toward defraying the costs. The remaining costs incurred shall be borne by the state in accordance with the procedures outlined in Section 2 of this Act. Within five days after the regular filing deadline, the chairman of the state executive committee shall forward to the secretary of state all filing fees collected pursuant to Section 1 (c) of this Act and an itemized listing of these fees. The secretary of state shall deposit these fees in a suspense account with the state treasury. The secretary of state is authorized to make any refunds pursuant to Section 186b, Texas Election Code, from this fund. The fees collected under any extended deadline shall be sent to the secretary of state before the date of the general primary election. Within five days after the date of the general primary election, the balance remaining in the suspense account shall be deposited to the general revenue fund.

(e) In each county in which voting machines or an electronic voting system has been adopted, the county commissioners court shall permit the county-owned voting machines or voting equipment to be used for the primary elections, including the conduct of absentee voting for the elections, at a charge for use at each election not exceeding \$16 per unit for voting machines adopted under Section 79 of the Texas Election Code, as amended (Article 7.14, Vernon's Texas Election Code), and not exceeding \$3 per unit for voting equipment adopted under Section 80 of the Texas Election Code, as amended (Article 7.15, Vernon's Texas Election Code). The maximum amount fixed in this Act includes the lease price for use of the unit, and also the charge for its preparation and maintenance if the county provides these services. The county is entitled to reimbursement for the cost of transporting the machines or equipment to and from the polling places if the county provides this service. Where voting is by an electronic voting system, the county may not charge for use of county-owned automatic tabulating equipment at the central counting station, but all actual expenditures incidental to operation of the central counting station in counting the ballots are payable out of the primary fund.

(f) All expenses of the county clerk in conducting absentee voting in the primary elections, including the employment of additional deputies where necessary, shall be paid by the county. A county is not entitled to reimbursement for any expenditure of county funds in connection with the conduct of absentee voting or any other services rendered by

the county clerk in the primary elections, except for voting machines and/or punchcard units used in conducting the absentee voting.

(g) The total combined compensation paid to the county chairman and the secretary of the county executive committee (where the committee has named a secretary) and to any office personnel employed to assist in the performance of the duties placed upon the chairman, the secretary, and the members of the county executive committee shall not exceed five percent of the amount actually spent in holding the primary elections for the year, exclusive of the compensation paid to these officers and employees.

(h) Charges for office expenses shall not be allowed for a period extending beyond the 10th day after the date of the last primary held by the party nor more than 30 days before the filing deadline.

(i) The secretary of state is authorized to promulgate rules in regard to the maximum number of election clerks who may be compensated for their services at a polling place, taking into account the number of registered voters in the election precinct, the number of votes cast in the precinct in the party's primary elections in 1972, the method of voting and other relevant factors. The secretary of state must allow compensation for the presiding judge, alternate judge, and at least one clerk for each precinct. The secretary of state may allow compensation for clerks employed in excess of the applicable limit set by the rules if he finds that employ-

ment of additional clerks was justified by special circumstances existing in the precinct. The secretary of state is authorized to promulgate any other reasonable rules which will minimize the costs of the primary elections. The secretary of state shall furnish a copy of all rules promulgated pursuant to this section to each county chairman at least 10 days before the election to which the rules apply.

(j) The county chairman is not required to file the financial report provided for in Subdivision 5 of Section 196 of the Texas Election Code, as amended (Article 13.18, Vernon's Texas Election Code), but he shall account for the primary fund in the manner provided in Section 2 of this Act.

(k) The secretary of state shall not approve any expenditure of state funds to any county organization that practices discrimination based on race, sex, age, creed, or national origin. The state attorney general shall be specifically responsible for the enforcement of this section.

(l) In the event a court of competent jurisdiction declares any portion of this section to be invalid, and by the 60th day before the filing deadline for a general primary election the judgment has become final or enforcement of the judgment has not been suspended, and the legislature has not corrected the invalidity (or in the event these circumstances arise subsequent to the 60th day before the filing deadline), the secretary of state shall promulgate a schedule of fees consistent with the court's judgment and the valid portions of this section; and that schedule shall be sub-

stituted for the statutory schedule until the legislature enacts a new schedule.

Sec. 2. STATE FINANCING

(a) Each county chairman of each political party in the state which is holding primary elections in 1974 shall submit to the secretary of state at least 30 days before the first primary election a sworn itemized estimate of the costs for conducting the first primary election in his county, together with a sworn statement of the filing fees and contributions received by the chairman, for such primary election to and including the date of such sworn statement. The secretary of state shall review the estimate and shall notify the chairman of any items which he has disallowed as unauthorized or excessive expenditures. Expenditures may be allowed only for those purposes which are properly payable out of the primary fund under existing law as established by the statutes and court decisions of this state. The secretary of state shall subtract from the approved estimate any amount of the fees and contributions received by the chairman remaining over and above legitimate expenses incurred for the conduct and financing of the primary elections for the year 1974, and shall certify to the comptroller of public accounts the net estimated amount which is payable out of the state funds, together with the secretary of state's calculation of three-fourths of that amount. The comptroller forthwith shall issue a warrant to the chairman for three-fourths of the certified amount.

(b) In each county in which a runoff primary is necessary, within 10 days after the first primary the county chairman shall submit to the secretary of state a sworn itemized estimate of the costs of the runoff primary. As in the case of the first primary, the secretary of state shall notify the chairman of items which he disallows, and shall certify to the comptroller the approved estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount; and the comptroller shall issue a warrant to the chairman for three-fourths of the certified amount.

(c) Within 20 days after the date of the runoff primary, the county chairman shall submit to the secretary of state a sworn itemized report of the actual costs, filing fees collected and contributions received for the primary election or elections (as the case may be) held by his party in his county. If the actual expenditure for an item exceeded the estimated amount, the chairman shall submit an explanation of the reason for the increased expenditure, and the secretary of state shall allow the increase if good cause is shown. The secretary of state shall certify to the comptroller the difference between the total amount payable out of state funds and the amount which has already been transmitted to the chairman, and the comptroller shall issue a warrant to the chairman in the amount certified. If the total amount of the fees and contributions and the payments from the state exceeds the actual expenditures incurred, the chairman shall refund the difference to the state, in the form of a check made payable to the secretary of state. The secretary of

state shall deposit the check in the state treasury to the credit of the appropriation from which payments to the county chairman were made by the secretary of state.

(d) Each county chairman shall deposit to the credit of the primary fund all warrants received by him under this section. Expenses incurred by or on behalf of the county executive committee for the conduct of the primary elections shall be paid from the primary fund, in the manner authorized by the committee.

(e) The county chairman is responsible for payment of claims for primary election expenses, and the state is not liable to any claimant for failure of the county chairman to pay a claim. No county chairman shall be personally liable, nor shall a county executive committee be liable, for any debts legally incurred in the implementation of this Act but unpaid because the appropriation provided by the legislature for the implementation of this Act was not sufficient to cover the actual expenditures made.

(f) The secretary of state shall prescribe and shall furnish to the county chairmen the forms which they are to use in submitting their statements and reports to him.

(g) Wherever the word "county chairman" is used in this Act, it shall apply to the county chairman or his successor in office, and such county chairman shall not be personally liable except for the misapplication of funds.

(h) In any case in which the secretary of state disallows an item of expenditure under Subsection (a) or (b) of this section, or refuses to allow an increase under Subsection (c) of this section, the county chairman may appeal to a district court of Travis County by filing a petition within 20 days after the date the notification is received from the secretary of state, and the district court shall allow such expenditures as are properly payable out of the primary fund under existing law. Any item not certified to the comptroller of public accounts for payment within 10 days after its submission to the secretary of state may be considered disallowed for this purpose. Judicial review shall be by trial de novo as are appeals from the justice court to the county court._____

Sec. 3. FUNDING

Funds for the administration of this Act shall be supplied from the general revenue fund by the General Appropriations Act. The secretary of state is authorized to expend funds appropriated in the General Appropriations Act for the administration of this Act for seasonal and part-time help, consumable supplies and materials and current and recurring operating expenses in an amount not to exceed \$30,000._____

Sec. 4. Paragraph (b), Section 12, Texas Election Code, as amended (Article 2.04, Vernon's Texas Election Code), is amended to read as follows:

“(b) No election precinct shall be formed out of two or more justice precincts or commissioners precincts, nor

out of the parts of two or more justice precincts or commissioners precincts; and no election precinct shall be formed out of two or more congressional districts or state senatorial districts or state representative districts, nor out of the parts of two or more such districts. If in September of any year there exists any election precinct in the county which does not comply with the foregoing requirements, the commissioners court shall make the necessary changes before the first day of October, either at a regular meeting or at a special meeting called for that purpose; and the order shall be published as provided in Paragraph (a) of this section. Subject to the provisions of the first sentence of this paragraph, no election precinct shall have resident therein less than 100 nor more than 2000 voters as ascertained by the number of registered voters for the last preceding presidential general election year; provided, however, that in precincts in which voting machines or devices have been adopted for use in accordance with Section 79 or Section 80 of this Code, the maximum number of voters shall be 3000. There shall be a minimum of one election precinct wholly contained within each commissioners precinct."

Sec. 5. Section 180, Texas Election Code (Article 13.02, Vernon's Texas Election Code), is amended to read as follows:

"180. Nominated at primary

"On primary election day in 1974 and every two years thereafter, candidates for all state offices to be chosen, and

candidates for Congress and all District offices to be chosen by the vote of any district comprising more than one county, to be nominated by each organized political party that casts twenty percent (20%) or more of the votes for Governor at the last general election for that office, shall, together with all candidates for offices to be filled by the voters of a county, or of a portion of a county, be nominated in primary elections by the qualified voters of such party.

Sec. 6. Subdivision 1, Section 222, Texas Election Code, as amended (Article 13.45, Vernon's Texas Election Code), and the title of that section are amended to read as follows:

"222. Nominations by parties receiving less than 20 percent of vote for governor

"Subdivision 1. Parties receiving more than two percent of vote for governor. Beginning with the year 1976, any political party whose nominee for Governor in the last preceding gubernatorial general election received as many as two percent but not more than 20 percent of the total votes cast for Governor must nominate its candidates for the general election by conventions as provided in Sections 224 and 225 of this code. In the year 1974, a party whose candidate for governor received as many as two percent but less than 20 percent of the total votes cast for governor in the general election held in 1972 may make its nominations by primary elections or by conventions. The state executive committee of a party which has a choice as to the method of nomination

in 1974 shall decide, and by resolution declare, whether the party nominations will be made by conventions or by primary elections, and shall certify their decision to the Secretary of State not later than 12 months before the 1974 general election."

Sec. 7. Paragraph 2, Section 190, Texas Election Code, as amended (Article 13.12, Vernon's Texas Election Code), which relates to the application of a candidate for a place on a general primary election ballot, is amended to read as follows:

"2. The application shall be filed with the state chairman in the case of all statewide offices and all district offices which are filled by the choice of voters residing in more than one county. It shall be filed with the county chairman of the particular county in the case of county and precinct offices and district offices which are filled by the choice of voters residing in only one county or less than one county. Except as provided in Paragraph 2a of this section, the application shall be filed not later than 6 p.m. on the first Monday in February preceding such primary."

Sec. 8. Subsection (c), Section 187, Texas Election Code, as amended (Article 13.09, Vernon's Texas Election Code), is amended to read as follows:

"(c) The official ballot shall be printed in black ink upon white paper. The ballot shall be printed by the county committee in each county, which shall furnish to the

presiding judge of the general primary for each voting precinct at least as many of such official ballots as the county election board determines is necessary for each party based upon the votes cast in the area in the last preceding presidential general election."

Sec. 9. The importance of this legislation and the crowded condition of the calendar in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and the rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted._____

W. P. HOBBYPresident of the SenatePRICE DANIEL, JR.Speaker of the House

I hereby certify that S. B. No. 11 passed the senate on March 29, 1973, by the following vote: Yeas 25, Nays 5; May 28, 1973, senate concurred in house amendments by the following vote: Yeas 21, Nays 9. _____

CHARLES SCHNABELSecretary of the Senate

I hereby certify that S. B. No. 11 passed the house, with amendments, on May 26, 1973, by a non-record vote. _____

DOROTHY HALLMANChief Clerk of the HouseApproved:June 15, 1973Date

Filed in the office of the
Secretary of State

4:30 p. m. o'clock

Jun 16 1973

DOLPH BRISCOEGovernorMARK W. WHITE, JR.Secretary of State

CERTIFICATE OF SERVICE

I, GLORIA TANNER SVANAS, a member of the Bar of the Supreme Court of the United States and the attorney for the AMERICAN PARTY OF TEXAS, Appellant herein, hereby certify that on the 16th day of July, 1973, I have mailed three (3) copies of the foregoing Supplemental Appendix to Counsel at the following addresses: The Honorable John Hill, Attorney General of Texas, P. O. Box 12548, Capitol Station, Austin, Texas, 78711, Attorney for Appellee, State of Texas; Mr. Robert Hainsworth, 3710 Holman, Houston, Texas, 77004, Attorney for Appellant, Robert Hainsworth; Mr. Michael Anthony Maness, Seventh Floor, 711 Main Street, Houston, Texas, 77002, Attorney for Appellant, Texas New Party and Texas Socialist Workers Party; Mr. Laurel N. Dunn, 2811 Old Robinson Road, Waco, Texas, 76700, attorney for Appellant, Laurel N. Dunn.

I certify that all parties required to be served, have been served.


GLORIA TANNER SVANAS

